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Attorneys for Plaintiff Tracy Turner, on behalf of herself
and other aggrieved employees**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**TRACY TURNER, on behalf of herself and
other aggrieved employees,

Plaintiff,

vs.

SMITHFIELD DISTRIBUTION, LLC, a
Delaware Limited Liability Company;
SMITHFIELD PACKAGED MEATS
CORP., a Delaware Corporation; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. _____

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA")**

- 1. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PAY
MINIMUM WAGES AND/OR
OVERTIME WAGES**
- 2. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS**
- 3. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
REST PERIODS**
- 4. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS**
- 5. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO TIMELY
PAY ALL WAGES DUE UPON
TERMINATION OF EMPLOYMENT**

1 Plaintiff TRACY TURNER (“Plaintiff”), on behalf of others aggrieved and as a
2 Representative of the State of California’s Labor and Workforce Development Agency
3 (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed PAGA Representative Action against her former
7 employers SMITHFIELD DISTRIBUTION, LLC, a Delaware Limited Liability Company;
8 SMITHFIELD PACKAGED MEATS CORP., a Delaware Corporation; and DOES 1-10
9 (collectively referred to as “Defendants”) under the California Labor Code to recover civil
10 penalties arising out of Defendants’ multiple labor code violations as described herein.

11 2. Specifically, during all or a significant part of the applicable limitations period
12 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code sections 2698, *et seq.*, Plaintiff alleges Defendants did not pay her or other hourly
14 employees all minimum and overtime wages. Defendants also failed to provide off-duty meal
15 and rest periods, failed to provide compliant wage statements, and failed to timely pay all wages
16 during and upon termination of employment. Plaintiff seeks to recover penalties for
17 Defendants’ violations of the labor code.

18 3. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
19 state of California, and aggrieved current and former non-exempt employees of Defendants.
20 Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties and
21 reasonable attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to
22 sue as a representative of the State of California. Plaintiff mailed written notice of the specific
23 provisions of the Labor Code that Defendants violated, including the facts and theories to
24 support the alleged violations, to the LWDA and to Defendants SMITHFIELD
25 DISTRIBUTION, LLC and SMITHFIELD PACKAGED MEATS CORP. pursuant to Labor
26 Code section 2699.3 on July 2, 2021. Neither Defendant provided notice of cure and the LWDA
27 did not provide notice of investigation in the 65 days after the mailing of the PAGA notice.

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1 II.

2 **JURISDICTION AND VENUE**

3 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
4 Civil Procedure section 395. Defendants conduct business throughout the County of Los
5 Angeles, and each Defendant is within the jurisdiction of this Court for service of process
6 purposes. The unlawful acts alleged have a direct effect on Plaintiff and other aggrieved
7 employees within the State of California and Los Angeles County. Defendants employ
8 numerous employees in Los Angeles County and in California generally. There is no federal
9 question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely
10 on California statutes and law, including the Labor Code, IWC Wage Orders, and the Code of
11 Civil Procedure.

12 5. Plaintiff alleges, on information and belief, that no federal question is raised and
13 that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in
14 the alternative, that exceptions for local case or controversy under the CAFA do apply and
15 prohibit removal of the action the federal court. Plaintiff is also informed and believes that
16 based on her rate of pay, her individual claims do not arise to the necessary amount in
17 controversy to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction
18 under the CAFA. Further, PAGA civil penalty actions are not subject to federal jurisdiction.

19 III.

20 **THE PARTIES**

21 6. Plaintiff TRACY TURNER is former employee of Defendants. At all relevant
22 times, Plaintiff was employed by Defendants as a non-exempt, on-site hourly employee
23 engaged in the loading and unloading of trailers and was most recently a forklift operator in Los
24 Angeles County. Plaintiff was discharged from employment in or around the end of July 2020.

25 7. Plaintiff alleges that all other non-exempt hourly employees in the State of
26 California worked under Defendants' policies, patterns, and practices and as a result, suffered
27 the same violations alleged herein.

28 8. Plaintiff is an "aggrieved employee" because she was employed by the alleged

1 violators and had one or more of the alleged violations committed against her and, therefore, is
2 properly suited to represent the interests of all other current and former employees of
3 Defendants.

4 9. Pursuant to Cal. Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent
5 all current and former aggrieved employees who suffered one or more of the alleged violations
6 (“aggrieved employees”) as described herein during the applicable limitations period for the
7 time period covered by the PAGA (which is defined as any time from one year and 65 days
8 prior to the commencement of this action until the commencement of trial in the matter). The
9 applicable limitations period is referred herein as “the PAGA Period.”

10 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
11 SMITHFIELD DISTRIBUTION, LLC is a Delaware Limited Liability Company that supplies
12 grocery items and food products, mainly meat products, to its customers throughout California.
13 Defendant had contracts with Big Lots and Dollar General. Defendant’s headquarters is located
14 Smithfield, Virginia, and Defendant has at least two locations in California.

15 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant
16 SMITHFIELD DISTRIBUTION, LLC a Delaware Corporation limited liability company with
17 locations throughout California. While Defendants listed headquarters is located Smithfield,
18 Virginia, Plaintiff alleges on information and belief that Defendant has at least two locations in
19 California. The members of the LLC are in various places, and it is unclear where the LLC’s
20 principal place of business and nerve-center operations is located.

21 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant
22 SMITHFIELD PACKAGED MEATS CORP. is a Delaware Corporation that supplies grocery
23 items and food products, mainly meat products, to its customers throughout California.
24 Defendant had contracts with Big Lots and Dollar General. Defendant’s headquarters is located
25 Smithfield, Virginia, and Defendant has at least two locations in California.

26 13. Pursuant to California Labor Code sections 558, 558.1, and 1197.1, Defendants
27 are employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who
28 violated, or caused to be violated, any provision regulating minimum wages or hours and days

1 of work in the applicable order of the Industrial Welfare Commission, as well as California
2 Labor Code sections 203, 226, 226.7, 1193.6, and 1194, and as such, are liable as employers of
3 Plaintiff for such violations pursuant to California Labor Code sections 558, 558.1, and 1197.1.

4 14. At all times relevant Defendants did, and do, transact, and conduct business in
5 the state of California, including, but not limited to, within the jurisdiction of the Court. At all
6 times relevant, Defendants were Plaintiff's employer for purposes of the California wage and
7 hour laws at issue in this action.

8 15. Plaintiff is unaware of the true names, capacities, relationships, and extent of
9 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
10 and believes, and based on that alleges, that DOE Defendants are legally responsible for the
11 wrongful conduct alleged and sues these Defendants by such fictitious names. Plaintiff will
12 amend this complaint when their true names and capabilities are ascertained.

13 16. Plaintiff is informed and believes and, based thereon alleges, that each
14 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
15 other aggrieved employees, and exercised control over their wages, hours, and working
16 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
18 joint scheme, business plan or policy in all respects pertinent hereto, and the act of each
19 Defendant is legally attributable to the other Defendants.

20 **IV.**

21 **GENERAL ALLEGATIONS**

22 17. At all times during the liability period, Plaintiff and other aggrieved current and
23 former employees were employed by Defendants and each of them, including Doe Defendants,
24 within the state of California.

25 18. Plaintiff was employed by Defendants from approximately August 2007 through
26 July 27, 2020. Plaintiff was an on-site hourly non-exempt employee engaged in the loading and
27 unloading of trailers, and was most recently a forklift operator. Plaintiff typically worked 4-6
28 days a week as needed and was paid approximately \$17.00 per hour as a regular hourly rate of

1 pay.

2 19. Plaintiff has worked with several hundred employees in Los Angeles County and
3 based on experience contends that Defendants subjected many other aggrieved employees to the
4 same or substantially similar wage, hour, and pay patterns and practices that are in direct
5 violation of many provisions of the California Labor Code and applicable regulations of the
6 California Industrial Welfare Commission (“IWC”). While Plaintiff Turner worked with
7 Defendants since at least August 2007, the wage, hour, and pay practices have been continuous,
8 repeated, and a regular pattern and practice in the last several years. The pay patterns and
9 practices alleged have been consistence and regular throughout the PAGA Period.

10 20. Time punch records for Plaintiff and other aggrieved employees demonstrate that
11 meal periods were routinely late, no general “stop work” signal, and that employees had to wait
12 in line to clock out for such meal periods. As a result, meal periods were almost always long
13 after the end of the fifth hour of work. While Plaintiff and other aggrieved employees were
14 permitted to leave the Defendants’ facilities, the time spent waiting for available timeclocks and
15 engaging in a new set of temperature checks essentially negated the possibility of leaving the
16 work premises as meal breaks were essentially pared down to about 20-25 minutes. This made
17 it physically impossible to leave premises without clocking back in late from lunch and, thus,
18 being subject to the Defendants’ disciplinary system. This conduct was an ongoing pattern and
19 practice directed and controlled by the Defendants during all or substantial part of the PAGA
20 Period.

21 21. Rest periods, when provided to Plaintiff and other aggrieved employees, were
22 also subject to considerable restraint by the Defendants. Plaintiff and other aggrieved
23 employees were not permitted to leave the Defendants’ premises and were subject to recall
24 without being provided premium payments for unprovided or interrupted rest periods. In
25 general, rest periods were subject to recall, Defendants’ control, and generally not timely
26 provided within every 3.5 to 4.0 hours worked. This conduct was an ongoing pattern and
27 practice directed and controlled by the Defendants during all or substantial part of the PAGA
28 Period, in an amount according to proof.

22. The aggrieved employees all earned wages, including all minimum, regular, and overtime wages, that were due upon termination of/separation from employment, but not timely provided. Defendants also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, in violation of Labor Code section 203, subject to waiting time assessments in an amount according to proof based on the number of terminated/separated employees during the PAGA Period. This conduct was an ongoing pattern and practice directed and controlled by the Defendants during all or substantial part of the PAGA Period.

23. During Plaintiff's employment, the Defendants changed names and identities listed on wage statements provided to Plaintiff and other aggrieved employees. Plaintiff was provided wage statements that did not include the correct address of the Defendants and, as a result, it was difficult to determine from the California Secretary of State website who the Defendants were or the actual legal entity names and addresses for determination of who and where to send notices without the assistance of an attorney. The Defendants' addresses listed on wage statements are not consistent with, and do not match, California Secretary of State records.

24. The Defendants' wage statements were also deficient in a multitude of other ways that impacted any ability of a reasonable hourly employee, like Plaintiff or other aggrieved employees, to determine total pay, total hours worked, regular and overtime pay rates and shift differential rates. For example, some wage statements show a "RspnPy" code (undefined) at \$5.00/hour, but total hours worked at that rate are not listed. Similarly, wage statements show overtime pay as only paid at half the rate of pay and not the total calculation of overtime, resulting in considerable confusion for even a long-term employee. Wage statements show an "SHF" code at \$0.15/hour, but there is no understanding or delineation as to what hours or shifts wherein the "SHF" code applies. Plaintiff did not understand, and the Defendants did not explain, how any of these codes related to pay provided. Finally, accessibility to wage statements also ceased after a period of time or after separation from employment, rendering the ability of an employee to even try to figure out the various pay codes impossible. This conduct

1 was an ongoing pattern and practice directed and controlled by the Defendants during all or
2 substantial part of the PAGA Period.

3 25. Plaintiff and other aggrieved employees were also provided wage statements that
4 did not reflect true hours worked and subject to the Defendants' control. At shift start times,
5 Plaintiff and other aggrieved employees were subject to temperature checks before clocking
6 into work and that was unpaid time, generally lasting several minutes due to the volume of
7 employees required to check in and clock in on time for their scheduled shifts. Similarly, for
8 any break period where Plaintiff and other aggrieved employees reported back to work, a
9 similar temperature check was required that resulted in missed, untimely, short, or otherwise
10 non-compliant rest or meal periods for purposes of California's meal and rest period statutes
11 and applicable regulations of the IWC. Plaintiff is unaware of any system Defendants utilized to
12 permit employees to claim premium pay for non-compliant meal or rest periods and is unaware
13 whether the Defendants ever provided compensation for non-compliant breaks to any similar
14 aggrieved employees. This conduct was an ongoing pattern and practice directed and controlled
15 by the Defendants during all or substantial part of the PAGA Period.

16 26. At all relevant times, Plaintiff and other aggrieved employees of Defendants
17 worked under the same policies, practices, and procedures relating to their employment,
18 including those governing wage statements, recordkeeping, payment of wages, and provisions
19 of meal and rest periods applicable to Defendants' facilities.

20 27. During the PAGA Period, Defendants maintained common policies and practices
21 of failing to pay all required wages for all hours worked.

22 28. The California Labor Code and applicable IWC Wage Order and portions of the
23 California Code of Regulations provide that all persons employed in the State of California
24 shall be (1) presumed to be an hourly or non-exempt employee; and (2) that all "hours worked"
25 and subject to the control of the employer, whether exercised or not, are to be paid at least the
26 minimum wage as determined by the State of California, and for overtime wages at either 1.5x
27 the regular rate of pay or 2.0x the regular rate of pay when "hours worked" exceeds 8 hours in a
28 single day or shift, or over 40 hours in a 168-total hour work. Labor Code sections 1194, *et seq.*

1 provide that notwithstanding any agreement to work for a lesser wage, an employee receiving
2 less than the legal overtime or minimum wage compensation is entitled to recover in a civil
3 action the unpaid balance of their owed compensation, including interest thereon, reasonable
4 attorneys' fees, and costs of suit.

5 29. Plaintiff and each aggrieved employee worked in excess of the maximum regular
6 rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are therefore
7 entitled to appropriate overtime compensation at time and a half (1½) rate of their regular pay,
8 and when applicable, double-time rates as set forth by the above Wage Orders, regulations,
9 and/or statutes.

10 30. Plaintiff and each aggrieved employee regularly worked overtime hours
11 exceeding 8 hours per day, but were not paid at the correct overtime rate of pay because non-
12 discretionary bonuses and commissions were not included in their regular rate of pay, as
13 required by Labor Code sections 510 and 1194, and section 3 of the applicable IWC Wage
14 Order. Thus, the regular rate of pay was not properly calculated for purposes of calculating the
15 proper overtime payment. As a result, Defendants failed to pay all overtime wages.

16 31. During the PAGA Period, Defendants maintained a common policy and practice
17 of failing to pay Plaintiff and other aggrieved employees for all hours worked. Defendants did
18 not pay Plaintiff and other aggrieved employees for time spent undergoing daily medical
19 checks, which involved Defendants taking employees' temperature to ensure they are not sick
20 and potentially infected with the Coronavirus. Furthermore, Defendants routinely and regularly
21 contacted Plaintiff and other aggrieved employees via telephone and/or text message while
22 Plaintiff and other aggrieved employees were off-the-clock to inform them of the following
23 day's delivery load, without paying any compensation for these hours worked, which resulted in
24 the failure to pay for all hours worked as required by law, including the failure to pay at least
25 minimum wage for all hours worked, and the applicable overtime pay for overtime hours
26 worked.

27 32. Defendants did not maintain a compliant meal period policy applicable to
28 Plaintiff and other aggrieved employees, nor did they inform their employees, including

1 Plaintiff, that they were permitted to take meal periods as provided under the California Labor
2 Code.

3 33. During the PAGA Period, Plaintiff and other aggrieved employees were
4 regularly prevented from taking timely compliant meal periods of at least thirty minutes and
5 prior to the end of their fifth hour of work. Instead, Plaintiff and other aggrieved employees
6 were rarely permitted meal periods, but yet were still required to record a meal period was
7 taken.

8 34. For the same reasons, Plaintiff and other aggrieved employees were also not
9 provided an opportunity to take a second meal period when they worked shifts greater than 10
10 hours.

11 35. During the PAGA Period, the Defendants, and each of them, required Plaintiff
12 and other aggrieved employees to work without taking statutory meal periods and failed to pay
13 the aggrieved employees an hour's pay in lieu thereof.

14 36. Plaintiff and other aggrieved employees were not provided with off-duty rest
15 periods of at least ten minutes. Instead, Plaintiff and other aggrieved employees were not
16 relieved off all duty in order to take any rest periods.

17 37. As a result of the failure to pay all minimum, regular, and overtime wages, as
18 described herein, Defendants further failed to pay Plaintiff and other aggrieved employees
19 timely during employment as required by Cal. Labor Code section 204.

20 38. During the PAGA Period, the Defendants, by virtue of centralized and uniform
21 pay policies, and based on general pattern and practice evidence, failed to provide accurate,
22 itemized wage statements to Plaintiff, and other aggrieved employees, as required by Labor
23 Code section 226. The wage statements did not contain the address of the legal entity that is the
24 employer of Plaintiff and other aggrieved employees. Furthermore, the wage statements did not
25 accurately state the total hours worked, the net and gross wage earned, or all applicable hourly
26 rates in effect during the pay period and the corresponding number of hours worked at each
27 hourly rate.

28 39. Plaintiff's employment ended in or around the end of July 2020. At the time of

1 her separation from employment, she was owed minimum wages, regular wages, overtime
2 wages, and meal and rest period premium wages from Defendants for all hours worked during
3 the PAGA Period. Similarly, Defendants failed to pay all wages and premiums owed Plaintiff,
4 and other aggrieved terminated employees, as required by Labor Code section 203.

5 40. During the PAGA Period, the Defendants failed to pay all wages owed to
6 terminated aggrieved employees. As a result, Plaintiff and other aggrieved employees are owed
7 waiting time penalties.

8 V.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM WAGES
AND/OR OVERTIME WAGES**

12 **(Labor Code §§ 204, 1194, 1194.2, and 1197)**

13 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

14 41. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
full herein.

15 42. Labor Code section 1197 states: “The minimum wage for employees fixed by the
16 commission or by any applicable state or local law, is the minimum wage to be paid to
17 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

18 43. Labor Code section 1198 states: “The maximum hours of work and the standard
19 conditions of labor fixed by the commission shall be the maximum hours of work and the
20 standard conditions of labor for employees. The employment of any employee for longer hours
21 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

22 44. Labor Code section 221 states: “It shall be unlawful for any employer to collect
23 or receive from an employee any part of wages theretofore paid by said employer to said
24 employee.”

25 45. Labor Code section 223 states: “Where any statute or contract requires an
26 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
27 wage while purporting to pay the wage designated by statute or by contract.”

28 46. Section 4 of the applicable IWC Wage Order provides that an employer may not

1 pay employees less than the applicable minimum wage for all hours worked.

2 47. Labor Code section 1194(a) states: “Notwithstanding any agreement to work for
3 a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
4 compensation applicable to the employee is entitled to recover in a civil action the unpaid
5 balance of the full amount of this minimum wage or overtime compensation, including interest
6 thereon, reasonable attorney’s fees, and costs of suit.”

7 48. Labor Code section 510, states in pertinent part: “Any work in excess of eight
8 hours in one workday and any work in excess of 40 hours in any one workweek and the first
9 eight hours worked on the seventh day of work in any one workweek shall be compensated at
10 the rate of no less than one and one-half times the regular rate of pay for an employee. Any
11 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
12 regular rate of pay for an employee. In addition, any work in excess of eight hours on any
13 seventh day of a workweek shall be compensated at the rate of no less than twice the regular
14 rate of pay of an employee.”

15 49. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
16 law, any provision of this code that provides for a civil penalty to be assessed and collected by
17 the Labor and Workforce Development Agency or any of its departments, divisions,
18 commissions, boards, agencies, or employees, for a violation of this code, may, as an
19 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
20 himself or herself and other current or former employees pursuant to the procedures specified in
21 Section 2699.3.”

22 50. Labor Code section 2699(f) states: “For all provisions of this code except those
23 for which a civil penalty is specifically provided, there is established a civil penalty for a
24 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
25 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
26 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
27 each aggrieved employee per pay period for each subsequent violation.”

28 51. As set forth herein, and during the relevant PAGA Period, Defendants did not

1 pay employees all minimum, regular, and overtime wages for all applicable hours worked.

2 52. Furthermore, Plaintiff and other aggrieved employees were not properly paid for
3 all hours worked including, but not limited to, the time Plaintiff and other aggrieved employees
4 spent undergoing health screenings and non-compliant meal periods, resulting in underpayment
5 of wages.

6 53. Defendants violated Labor Code sections 510, 1194, 1197, and 1198 as well as
7 the “Hours and Days of Work” and “Minimum Wages” and “Overtime Wages” sections of the
8 applicable Wage Order. As a result, Plaintiff is entitled to recover civil penalties pursuant to
9 Labor Code sections 558(a)(1)-(2), 1197.1, and 2699(a) or, in the alternative, section
10 2699(f)(2), attorney’s fees, expenses, and costs of suit.

11 54. Plaintiff, as a representative of the general public, will and does seek to recover
12 any and all penalties for each and every violation, in an amount according to proof, as to those
13 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
14 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
15 of California.

16 **SECOND CAUSE OF ACTION**
17 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE MEAL**
18 **PERIODS OR PAY IN LIEU THEREOF**
19 **(Labor Code §§ 226.7 and 512)**
20 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

21 55. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
22 full herein.

23 56. Labor Code section 226.7, in pertinent part, provides as follows:

24 (b) An employer shall not require an employee to work during a meal
25 or rest or recovery period mandated pursuant to an applicable statute, or
26 applicable regulation, standard, or order of the Industrial Welfare
27 Commission, the Occupational Safety and Health Standards Board, or
28 the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or
recovery period in accordance with a state law, including, but not
limited to, an applicable statute or applicable regulation, standard, or
order of the Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one additional hour of
pay at the employee’s regular rate of compensation for each workday

1 that the meal or rest or recovery period is not provided.

2 57. Labor Code section 512(a) provides as follows:

3 An employer shall not employ an employee for a work period of more
4 than five hours per day without providing the employee with a meal
5 period of not less than 30 minutes, except that if the total work period per
6 day of the employee is no more than six hours, the meal period may be
7 waived by mutual consent of both the employer and employee. An
8 employer shall not employ an employee for a work period of more than
9 10 hours per day without providing the employee with a second meal
10 period of not less than 30 minutes, except that if the total hours worked is
11 no more than 12 hours, the second meal period may be waived by mutual
12 consent of the employer and the employee only if the first meal period
13 was not waived.

14 58. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
15 of civil penalties for violations of the labor code, to be recovered through a civil action brought
16 by an aggrieved employee on behalf of himself or herself and other current or former
17 employees pursuant to the procedures specified in Section 2699.3.

18 59. Defendants failed to provide aggrieved employees with compliant meal periods
19 as provided in Labor Code sections 226.7 and 512, and failed to pay them the additional pay at
20 the employee's regular rate of compensation for each work day in lieu of providing duty-free
21 meal period(s).

22 60. Defendants' policies were non-compliant because, among other reasons, they
23 failed to state employees are entitled to a meal period when working five hours or more and
24 failed to state that employees are entitles to a second meal period, or premium wages in lieu of
25 meal period, after working periods of ten hours or more. Defendants' policies were non-
26 compliant because they did not provide duty-free and uninterrupted meal periods of at least
27 thirty minutes.

28 61. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well
as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiff is
entitled to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and
2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

62. Plaintiff, as a representative of the general public, will and does seek to recover

any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

THIRD CAUSE OF ACTION
CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE MANDATED REST PERIODS OR TO PAY ADDITIONAL WAGES IN LIEU THEREOF
(Cal. Labor Code §§ 226.7 and 558; § 12 of the Applicable IWC Wage Order)
(On behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

63. Plaintiff incorporates the preceding paragraphs of this Complaint.

64. Labor Code section 226.7 provides in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

65. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

66. Defendants failed to authorize and permit all rest periods as required by law. Plaintiff and other aggrieved employees were not paid a rest period premium for non-compliance with Labor Code section 226.7.

67. Defendants violated Labor Code sections 226.7 and 1198 as well as the "Rest Periods" section of the applicable Wage Order. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2),

1 attorney's fees, expenses, and costs of suit.

2 68. Plaintiff, as a representative of the general public, will and does seek to recover
3 any and all penalties for each and every violation, in an amount according to proof, as to those
4 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
5 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
6 of California.

7 **FOURTH CAUSE OF ACTION**
8 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE**
9 **ITEMIZED WAGE STATEMENTS**
10 **(Labor Code §§ 226 and 1174)**
11 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

12 69. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 70. Labor Code section 226(a) states in pertinent part:

14 "An employer, semimonthly or at the time of each payment of wages,
15 shall furnish to his or her employee, either as a detachable part of the
16 check, draft, or voucher paying the employee's wages, or separately if
17 wages are paid by personal check or cash, an accurate itemized statement
18 in writing showing": (1) gross wages earned; (2) total hours worked by the
19 employee, except for any employee whose compensation is solely based
20 on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial
22 Welfare Commission; (3) the number of piece-rate units earned and any
23 applicable piece rate if the employee is paid on a piece-rate basis; (4) All
24 deductions, provided that all deductions made on written orders of the
25 employee may be aggregated and shown as one item; (5) net wages
26 earned; (6) the inclusive dates of the period for which the employee is
27 paid; (7) the name of the employee and only the last four digits of his or
28 her social security number or an employee identification number other
than a social security number; (8) the name and address of the legal entity
that is the employer; and (9) all applicable hourly rates in effect during the
pay period and the corresponding number of hours worked at each hourly
rate by the employee. "The deductions made from payment of wages shall
be recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at
the place of employment or at a central location within the State of
California."

26 71. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
27 of civil penalties for violations of the labor code, to be recovered through a civil action brought
28 by an aggrieved employee on behalf of himself or herself and other current or former employees

1 pursuant to the procedures specified in Section 2699.3.

2 72. Defendants have knowingly and intentionally failed to comply with Labor Code
3 section 226(a) on each and every wage statement provided to Plaintiff and other aggrieved
4 employees, by failing to provide accurate information in each of the required categories,
5 including the names and addresses of all employees employed, the correct amount of gross
6 wages earned, net wages earned, total hours worked, and all applicable hourly rates of pay and
7 all hours worked at each rate.

8 73. Labor Code section 226.3 provides for civil penalties for violations of the Labor
9 Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each
10 subsequent violation.

11 74. Defendants violated Labor Code section 226. As a result, Plaintiff is entitled to
12 recover civil penalties pursuant to Labor Code sections 226.3 and 2699(a) or, in the alternative,
13 section 2699(f)(2), attorney's fees, expenses, and costs of suit.

14 75. Plaintiff, as a representative of the general public, will and does seek to recover
15 any and all penalties for each and every violation, in an amount according to proof, as to those
16 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
17 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
18 of California.

19 **FIFTH CAUSE OF ACTION**
20 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES OWED AT**
21 **TERMINATION**
22 **(Labor Code §§ 201-203)**
23 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

24 76. Labor Code section 204(a) states, in pertinent part: "All wages . . . earned by any
25 person in any employment are due and payable twice during each calendar month, on days
26 designated in advance by the employer as the regular paydays." Section 204(d) states: "The
27 requirements of this section shall be deemed satisfied by the payment of wages for weekly,
28 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
following the close of the payroll period." The "Minimum Wages" Section of the applicable
Wage Order further states "every employer shall pay to each employee, on the established

1 payday for the period involved, not less than the applicable minimum wage for all hours worked
2 in the payroll period.”

3 77. An employer who discharges an employee must pay all compensation due and to
4 that employee immediately upon discharge. Labor Code § 201. An employer must pay all
5 compensation due to an employee who quits within 72 hours. Labor Code § 202. If an employer
6 willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the
7 subject employee’s wages until paid or until an action is commenced, but the penalty cannot
8 exceed 30 days’ wages. Labor Code § 203.

9 78. Labor Code section 210(a) provides: “(a) In addition to, and entirely independent
10 and apart from, any other penalty provided in this article, every person who fails to pay the
11 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205,
12 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
13 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
14 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
15 pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

16 79. California Labor Code section 256 states that a civil penalty shall be imposed “in
17 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

18 80. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
19 of civil penalties for violations of the labor code, to be recovered through a civil action brought
20 by an aggrieved employee on behalf of himself or herself and other current or former employees
21 pursuant to the procedures specified in Section 2699.3.

22 81. As set forth herein, Defendants failed to pay all wages and penalties owed to
23 Plaintiff and other aggrieved employees within the timelines required by Cal. Labor Code
24 sections 201-203 and 204. Defendants further failed to pay all waiting time penalties as required
25 by Labor Code section 203.

26 82. As a result, Defendants willfully violated the Labor Code and are liable to
27 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 210,
28 256, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount

1 according to proof.

2 83. Plaintiff, as a representative of the general public, will and does seek to recover
3 any and all penalties for each and every violation, in an amount according to proof, as to those
4 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
5 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
6 of California.

7 **VI.**

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff TRACY TURNER, on behalf of herself and all other aggrieved
10 employees and as a Representative of the Labor and Workforce Development Agency, prays for
11 judgment as follows:

12 a. For maintenance of this claim as a Representative Action under the PAGA, and
13 providing Plaintiff and her counsel with all enforcement capability as if this action has been
14 instituted by the Department of Labor Standards enforcement ("DLSE");

15 b. For recovery of civil penalties as permitted by Labor Code sections 2699.3,
16 1197.1, and 558(a)(1)-(2), in an amount according to proof;

17 c. For recovery of civil penalties as permitted by Labor Code section 226.3, for
18 failing to provide accurate itemized wage statements, in an amount to be assessed and
19 according to proof;

20 d. For recovery of civil penalties as permitted by Labor Code sections 210, for
21 failing to pay wages timely during employment;

22 e. For recovery of civil penalties as permitted by Labor Code section 256 for
23 failing to provide wages timely to terminated employees upon separation of employment;

24 f. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
25 extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not
26 provided, for failing to comply with Labor Code sections 201-203, 204, 226, 226.7, 1174,
27 1194, 1197, and 1198.

28 g. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as

1 to any restitution recovery;

2 h. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
3 California Labor Code sections 218.5, 226(e), 1194, the PAGA, and/or Code of Civil Procedure
4 section 1021.5 on a public benefit theory; and all other applicable state laws;

5 i. For injunctive relief; and

6 j. Such other legal equitable relief as this Court deems necessary, just, equitable
7 and proper.

8 COHELANKHOURY & SINGER
9 DAVTYAN LAW FIRM, INC.

10 Dated: September 23, 2021

By: 

11 Michael D. Singer
12 J. Jason Hill

13 Counsel for Plaintiff TRACY TURNER, on behalf of
14 herself and other aggrieved employees
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